

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

THIS DOCUMENT RELATES TO:
All Tennessee Actions

MDL No. 2419
Master Docket No.: 1:13-md-2419-RWZ

Honorable Rya W. Zobel

**PLAINTIFFS' STEERING COMMITTEE'S NOTICE OF FILING OF
PROPOSED BELLWETHER CASES**

The Plaintiffs' Steering Committee ("PSC") hereby files this Notice of Proposed Bellwether Cases identifying eight (8) cases involving patients injected at the Saint Thomas Outpatient Neurosurgical Center (the "Saint Thomas Center") for bellwether trials.¹ The PSC met and conferred with counsel for the Saint Thomas Center and its affiliated defendants, Saint Thomas Hospital, Saint Thomas Network, and Saint Thomas Health (collectively the "Saint Thomas Entities" and together with the Saint Thomas Center, the "Saint Thomas Parties") in order to agree on some parameters for selection of bellwether cases. During this meet and confer, the parties agreed to select 8 cases from the following five different categories of potential injuries that patients could have suffered from as a result of the fungal meningitis catastrophe:

1. Death
2. Fungal meningitis and other spinal or paraspinal infection;
3. Fungal meningitis only;
4. Spinal or paraspinal fungal infection only;
5. Other injury.

The PSC identifies the following 8 cases to be part of the initial bellwether pool (the "PSC Bellwether Pool"):

1. *Reed v. Ameridose, et al*, 1:13-cv-12565;
2. *Rybinski v. Ameridose, et al*, 1:13-cv-12818;
3. *Ziegler v. Ameridose, et al*, 1:13-cv-12588;

¹ The PSC has not identified any cases involving patients at the other two Tennessee clinics affected by the fungal meningitis catastrophe. The cases involving patients injected at the Specialty Surgery Center are likely going to need to be amended to add at least one, if not two, additional defendants. Only two cases involving the other Tennessee clinics, PCA Pain Clinic, have been filed. As a result, the PSC did not believe these cases were appropriate for bellwether selection at this time.

4. *Sharer et al v. Ameridose, et al*, 1:13-cv-12577;
5. *McElwee v. Ameridose, et al*, 1:13-cv-12625;
6. *Wray v. Ameridose, et al*, 1:13-cv-12737;
7. *Sullivan v. Ameridose, et al*, 1:13-cv-12781; and
8. *Berry v. Ameridose, et al*, 1:13-cv-12838.

Each of the cases in the PSC Bellwether Pool originated in the Middle District of Tennessee and the Joint Panel on Multidistrict Litigation transferred these cases to this Court. A brief description of the cases and the category of injury in which each fall is more fully addressed below.

1. Category 1: Cases Involving Death of Patient: *Reed, Rybinski*

Diane Reed received her injections at the Saint Thomas Center from Dr. Culclasure on August 12, 2012, September 4, 2012, and September 18, 2012. She is believed to be the third person to have contracted fungal meningitis in Tennessee and she died on October 3, 2012 after spending approximately 11 days in the hospital.

Thomas Rybinski received his injections at the Saint Thomas Center on July 30, 2012 from Dr. Culclasure. He spent 23 days at the Vanderbilt University Medical Center receiving treatment for his injuries prior to his death. He is believed to be the second person to have contracted fungal meningitis in Tennessee. He died of complications from fungal meningitis on September 29, 2012.

2. Category 2: Cases Involving Patients That Contracted Fungal Meningitis and An Additional Spinal or Paraspinal Infection: *Sullivan, Sharer*

Anna Sullivan received her injections at the Saint Thomas Center on August 20, 2012. On October 2, 2012, she was diagnosed with fungal meningitis and also received a diagnosis of arachnoiditis.

Lewis Sharer received his injections at the Saint Thomas Center on July 9, 2012, July 23, 2012 and September 4, 2012 from Dr. Culclasure. On October 5, 2012 he was diagnosed with fungal meningitis and eventually developed a fungal epidural abscess. He also eventually received diagnoses of arachnoiditis and cauda equina syndrome.

3. Category 3: Cases Involving Patients That Contracted Fungal Meningitis Only: *Wray, McElwee*

BJ McElwee received his injections in August and September of 2012 at the Saint Thomas Center. On October 4, 2012, Mr. McElwee was diagnosed with fungal meningitis.

Jane Wray received her injections on August 20, 2012 and August 31, 2012 at the Saint Thomas Center. On October 5, 2012, after several previous trips to a hospital for severe headache, Mrs. Wray was diagnosed with fungal meningitis at the Saint Thomas Hospital.

4. Category 4: Cases Involving Patients That Contracted Spinal Or Paraspinal Fungal Infection: *Ziegler*

Adam Ziegler received his injection on September 11, 2012 at the Saint Thomas Center from Dr. Culclasure. On October 7, 2012, after previously submitting to Blanchfield Army Hospital with a complaint of severe back and hip pain, Maj. Ziegler was diagnosed with sacroilitis and abscess at the Vanderbilt University Medical Center.

5. Category 5: Cases Involving Patients That Suffered Other Injuries

Fredia Berry received her injections on August 24, 2012 and September 7, 2012 at the Saint Thomas Center. She received lumbar punctures on October 2, 2012, November 9, 2012 and October 14, 2013.

August 14 , 2015

Respectfully submitted,

/s/ J. Gerard Stranch, IV

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Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, J. Gerard Stranch, IV, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: August 14, 2015

/s/ J. Gerard Stranch, IV
J. Gerard Stranch, IV